PUBLIC PROSECUTOR

v.

ALINSUG GEB URBASIK AXEL & ANOR.

HIGH COURT, BRUNEI DARUSSALAM
DATO' SIR DENYS ROBERTS CJ
[CRIMINAL TRIAL NO. 12 OF 1994]
22 MARCH 1995

***CRIMINAL LAW**: Use of counterfeit traveller's cheques - Defendants charged for using as genuine counterfeit banknotes, possession and cheating under ss. 420, 489 & 489B of the Penal Code - Ingredients of charges - Whether charges proved - Whether a traveller's cheque is a "banknote" for the purposes of ss. 489A, 489C, 489D & 489E of the Penal Code.*

***CRIMINAL LAW**: Common intention - Whether a rule of evidence or creating a substantive offence - Section 34 of the Penal Code.*

The first defendant, a German national, went to Brunei to look for business opportunities and while in flight to Brunei, he met the second defendant, a Pakistani businessman. Later at the hotel, the second defendant asked the first defendant to cash traveller's cheques for him using his German passport in return for which the second defendant would give him a certain sum for the traveller's cheques cashed. The first defendant duly cashed the traveller's cheques at various banks over a period of three days until his arrest.

The two defendants faced 23 charges of using as genuine counterfeit bank notes knowing or having reason to believe the same were counterfeit (s. 489B Penal Code), possession (s. 489 Penal Code), cheating and dishonestly inducing the bank to deliver property (s. 420 Penal Code) and common intention (s. 34 Penal Code). The second defendant failed to appear and the trial proceeded against the first defendant who alleged that he was not aware the traveller's cheques were counterfeit.

The issues for the Court's determination were whether the traveller's cheques were "banknotes" within the meaning of ss. 489A, 489C, 489D and 489E of the Penal Code, whether the first defendant knew or had reason to believe that the travellers' cheques were counterfeit when he presented them and whether the ingredients of the charges had been proved by the prosecution beyond reasonable doubt.

Held:

[1] A traveller's cheque is a "banknote" for the purposes of ss. 489A, 489C, 489D and 489E of the Penal Code since it amounts to a promissory note or engagement for the payment of money to the bearer on demand.

[2] The first defendant's knowledge or belief that the traveller's cheques were counterfeit must be assessed by surrounding circumstances not by the fact that the traveller's cheques appeared to be other than genuine. There were factors that should have alerted the first defendant. The circumstances of the encashments show that the first defendant had ample reason to believe the traveller's cheques were counterfeit.

[3] The expert evidence established that the traveller's cheques were counterfeit and the fact that a large number of traveller's cheques were found in the first defendant's possession reinforced the view that he knew or must have believed they were counterfeit.

[4] The prosecution established that the cashiers of the various banks were deceived into handing over cash to the first defendant because they believed the traveller's cheques to be genuine. This amounted to deception and by presenting the traveller's cheques knowing them to be counterfeit, there was dishonest inducement by the first defendant to another person that cash should be delivered upon presentation of the traveller's cheques and therefore cheating or attempted cheating was established. The Court also took into account the encashments by the first defendant in several banks as showing that each transaction was part of a series of frauds, not that the intention of the first defendant was dishonest on any particular occasion.

[5] Section 34 of the Penal Code lays down the principle of joint liability in the doing of a criminal act i.e. a common intention to do a criminal act in furtherance of that intention. The section does not create a substantive offence but lays down a rule of evidence.

[6] The prosecution has proved beyond reasonable doubt that the first defendant was guilty of the 23 charges.

[First defendant was convicted and sentenced to 15 months imprisonment on each charge to run concurrently]

Legislation referred to:
Criminal Procedure Code, ss. 117(2), 220, 489
Penal Code (Cap. 22), ss. 24, 25, 28, 34, 415, 420, 489A - 489E

For the public prosecutor - Shazale Alice Khan
For the defendant - In person

JUDGMENT

Denys Roberts CJ:

The two defendants faced 22 charges. The first defendant, Mr. Alinsug (D1) faced charge 23 by himself.

Charges 1 to 22 comprised 11 pairs of charges, brought against each of the defendants. For example, charges 1 and 2 were as follows:

1st Charge

> That both of you, on about 8 August 1994 at Hongkong and Shanghai Bank. ("HK Bank"). Lambak, Brunei Darussalam, in furtherance of your common intention used as genuine counterfeit bank notes (as listed in Appendix H attached herewith) knowing or having reason to believe the same to be counterfeit, and that both of you thereby committed an offence, punishable under s. 489B of the Penal Code (Cap. 22) read with s. 34 of the same.

2nd Charge

> That both of you, on or about 8 August 1994 at the HK Bank, Lambak, Brunei Darussalam, in furtherance of your common intention cheated the said bank by dishonestly causing it to believe that the travellers cheques (amounting to US$1,000 as listed in Appendix H attached herewith) which both of you presented for cashing were genuine when in fact they were counterfeit and thereby both of you dishonestly induced the said bank to deliver to both of you a sum amounting to BN$1,485 and which was the property of the said bank and that both of you thereby committed an offence punishable under s. 420 of the Penal Code (Cap. 22) read with s. 34 of the same.

Charges 3 and 4 alleged the use of counterfeit banknotes ("TC") at the HK Bank, Gadong, of value of US$500 on 8 August 1994;

Charges 5 and 6 alleged the use of counterfeit banknotes at the HK Bank, Bandar Seri Begawan, of a value of US$3,000 on 8 and 9 August 1994;

Charges 7 and 8 alleged the use of counterfeit banknotes at the HK Bank, Lambak, of a value of US$1,000 on 9 August 1994;

Charges 9 and 10 alleged the use of counterfeit banknotes at the HK Bank, Seri Complex, of a value of US$1,100 on 9 August 1994;

Charges 11 and 12 alleged the use of counterfeit banknotes at Citibank, Bandar Seri Begawan, of a value of US$1,000 on 9 August 1994;

Charges 13 and 14 alleged the use of counterfeit banknotes at the HK Bank, Bandar Seri Begawan, of a value of US$1,000 on 10 August 1994;

Charges 15 and 16 alleged the use of counterfeit banknotes at the HK Bank, Seri Complex of a value of US$1,000 on 10 August 1994;

Charges 17 and 18 alleged the use of counterfeit banknotes at the HK Bank, Lambak of a value of US$1,000 on 10 August 1994;

Charges 19 and 20 alleged the use of counterfeit banknotes at the HK Bank, Muara, of a value of US$3,000 on 7 and 10 August 1994;

Charges 21 and 22 alleged the use of counterfeit banknotes at the HK Bank, Bandar Seri Begawan, of a value of US$1,500 on 11 August 1994.

Charges 1 to 22 were eleven pairs. The first charge in each pair was of an offence against s. 489B of the Penal Code (PC), the maximum penalty for which is 15 years and a fine. The second such charge was of cheating, contrary to s. 420 PC, the maximum penalty for which is 7 years and a fine, except for charge 22, which contained a charge of attempting to cheat, since the TC presented were not cashed.

D1 alone was charged (charge 23) with possession of counterfeit banknotes, amounting to US$6,000, on 11 August 1994.

D2, who had been released on bail, did not appear. The trial therefore continued in his absence.

The charges were read and explained to D1 who answered:

> The Banks accepted the TC as genuine because they thought they were. I did not know any of the TC were counterfeit when they were given to me or when I presented them to the various banks.

A plea of not guilty was entered for D1 on every charge, in view of his reply.

During the trial, charge 12 was amended in a minor particular, a sum of BD$1,485 being substituted for BD$1,400. I put the amended charge to D1 and recorded on his behalf a plea of not guilty.

The Law

I remind myself that the prosecution must prove that each defendant is guilty of each offence charged beyond a reasonable doubt and that this burden never shifts. It must also establish, to the same degree, every element which is required for a conviction under the relevant section of the Penal Code or other law for each charge.

If, during this judgment, I express myself as satisfied or sure or say that something is proved or that I have no doubt, this should be taken as meaning that the fact has been proved beyond a reasonable doubt.

Evidence against one defendant is not evidence against another, unless the circumstances of such evidence make it admissible against both.

The prosecution must discharge its burden on each charge and against each defendant separately. A finding of guilt or acquittal against a co-defendant on any charge, or against a defendant himself on some other charge, does not mean that that defendant should be convicted or acquitted of the charge which he faces. There must be sufficient admissible evidence against a defendant on any particular charge, before he may be properly convicted of the offence charged in it.

Section 489 BPC

Both defendants faced 11 charges under this section.

For the purpose of this section (and ss. 489A, 489C, 489D and 489E) the expression "banknote" is defined as a:

> promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world.

I am satisfied that a traveller's cheque is a "banknote" for the purposes of these sections, since it amounts to a promissory note or engagement for the payment of money to the bearer on demand.

All the traveller's cheques which are the subject of these charges were, on the face of them, issued by those carrying on the business of banking and this has not been challenged.

Before a conviction is obtained for an offence against s. 489 BPC the prosecution must prove that the:

(a) TC was forged or counterfeit;

(b) defendant used the TC as genuine;

(c) defendant, when he used the TC, knew or had reason to believe that the TC was forged or counterfeit.

Although the prosecution may rely on all the circumstances of the case to establish such knowledge or belief, mere possession of a TC by a defendant does not place any burden on him to account for its possession or to prove that his possession was innocent.

The phrase used in the section is "knowing or having reason to believe". Suspicion or doubt is not sufficient to make a defendant liable under s. 489 BPC (or under s. 489 CPC).

By s. 28 PC a person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that deception to practice deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1 to that section says that the imitation need not be exact, though it is essential that the counterfeit is such that it would be possible to pass it off as genuine.

Section 489 CPC

D1 faced charge 23, which alleged his possession of counterfeit banknotes, contrary to this section.

To prove the possession of a counterfeit TC, the prosecution must establish that the:

(a) TC was counterfeit;

(b) defendant was in possession of it;

(c) defendant, at the time of his possession, "knew or had reason to believe" that the TC was counterfeit; and

(d) defendant intended to use it as genuine, or that it might be used as genuine.

It is for the prosecution to prove the existence of circumstances which lead, clearly and irresistibly, to the inference that the defendant was in possession of the counterfeit TC that he knew, or had reason to believe that the TC were counterfeit and that he intended to use them as genuine.

This intention can be proved by collateral circumstances, among them the fact that the defendant has used counterfeit TC before, or that he was found in possession of similar TC in such large numbers that his possession for any other purpose is inexplicable.

Section 420 PC

10 of the charges allege that the defendants were guilty of the offence of cheating and dishonestly inducing the delivery of property, contrary to s. 420 PC. Charge 22 alleges attempted cheating.

Cheating is defined in s. 415 PC as:

> Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation or property is said to "cheat".
>
> Explanation. A dishonest concealment of facts is a deception within the meaning of this section.

This section therefore requires the prosecution to establish that:

(a) there has been a deception; and

(b) that the deception was fraudulent or dishonest.

By s. 25 PC a person is said to do a thing fraudulently if he does it with intent to defraud, but not otherwise. By s. 24 PC "dishonestly" is defined as "anything done with the intention of causing wrongful gain to one person or wrongful loss to another person".

It is to be noted that the section does not require both fraud and dishonesty to be proved; one or the other is sufficient; and

(c) there must be an inducement of a person, to deliver property to another, or to do something which he would not do if he were not so deceived.

Evidence of similar transactions with other persons, before or after the date of the offence charged, is admissible, not to prove the offence itself but to show that the transaction was one of a series of frauds and that the intention of the defendant on this occasion was dishonest or fraudulent.

It is not necessary that the false pretence should have been made in express words by the defendant. This may be inferred from the circumstances, including the conduct of the defendant in obtaining the property.

Section 34 PC

In charges 1 to 22 it is alleged that each of the defendants committed an offence punishable under s. 489 BPC or s. 420 PC, "as read with s. 34 of the same".

Section 34 PC dealing with acts done by several persons in furtherance of a common intention, is in these terms:

> When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

This section lays down a principle of joint liability in the doing of a criminal act. The essence of such liability is found in the existence of a common intention animating the accused, leading to the doing of a criminal act in furtherance of that intention.

If a separate act is done by one person, and the act is done in furtherance of a common intention, each person is liable, as if he had done the act himself.

The section does not create a distinct offence. It prescribes a principle of joint criminal liability. It is a rule of evidence and does not create a substantive offence.

A person may be liable under this section for an offence which he did not actually commit himself. The important element of s. 34 PC is that of participation in action.

The prosecution should therefore prove:

(a) the presence of the defendant at or near the commission of the crime;

(b) the participation of the defendant in the commission of the offence;

(c) the existence of a common intention, that is to say a pre-arranged plan, to be proved by conduct or by any incriminating facts.

The inclusion in the charges of a reference to s. 34 may have been of importance if D2 had attended a joint trial with D1. It has become unnecessary because, on the evidence of the prosecution, which has been agreed by D1, all the transactions contained in the charges were carried out by D1 (though he alleges that all were at the instigation of D2). D1 would be guilty of the substantive offences, if all the elements of these were proved and not guilty by virtue of s. 34 PC. I see no reason to amend the charges to remove reference to that section.

Statements of D1

During the investigations by the police, three statements were made by D1.

I questioned D1 as to the voluntary nature of each statement, putting to him the various elements contained in the definition of "voluntary" in s. 117(2) CPC. I was not satisfied, from his answers, that these statements were voluntary. I therefore adopted the alternative procedure. At the end of the prosecution evidence, D1 made it clear that he was after all satisfied that the statements were correct, that he did not wish to challenge any of them and that he did not object to them being put in evidence. I therefore admitted them all.

The statements made by D1 to the police were:

(a) to S/I Muhammad, on 12 August 1994 (P10);

(b) to S/I Muhammad, on 16 August 1994 (P11);

(c) to S/I Kevin Chiuh on 18 September 1994 (P12);

In P10 D1 stated that he was a German national with a Filipino wife and four children.

He decided in July 1994 to come to Brunei to look for business opportunities as his business in Manila was not successful.

On 6 August 1994, he met a Pakistani Amjad Nawaz (D2) while he was on the plane to Brunei. D2 told him that he (D2) was involved in the export/import and construction businesses. D2 asked D1 to come to the Capital Hotel, with which D1 agreed. D2 paid cash for the hotel deposit.

In the hotel room, D2 took out a leather file in which were many TC. D2 told him that D1 could cash the TC with his German passport in Brunei.

D1 said that he was "a little bit afraid" but D2 told him that it should be no problem, as he (D2) had done this before, in many places, not only in Brunei.

So D1 agreed. On 8 August 1994 he left the hotel with D2. He then described how they visited:

(a) HK Bank in BSB where he cashed US$TC for $1,000 (charges 5 and 6);

(b) HK Bank at Lambak where he cashed US$TC for $1,000 (charges 1 and 2);

(c) HK Bank at Gadong where he cashed US$TC for $500 (charges 3 and 4);

D1 gave all the proceeds to D2. He got BD$4,433 that day.

On 9 August, he left the hotel with D2 where they visited:

(a) HK Bank, BSB, where he cashed US$TC for $2,000 (charges 5 and 6);

(b) HK Bank, Lambak, where he cashed US$TC for $1,000 (charges 7 and 8);

(c) HK Bank, Muara, where he cashed US$TC for $1,000 (charges 19 and 20);

(d) HK Bank, Seri Complex, where he cashed US$TC for $1,000 (charges 9 and 10);

The total that day was US$6,000 or BD$9,012.

D1 handed all the money to D2.

On 10 August, he went with D1 to:

(a) HK Bank, BSB, where he cashed US$TC for $1,000 (charges 13 and 14);

(b) HK Bank, Seri Complex, where he cashed US$TC for $1,000 (charges 15 and 16);

(c) HK Bank, Lambak, where he cashed US$TC for $1,000 (charges 17 and 18);

(d) HK Bank, Muara, where he cashed US$TC for $2,000 (charges 19 and 20);

The total that day was BD$7,388, which D1 gave to D2.

On 11 August 1994 they went to HK Bank, BSB, where D1 was taken into an office and later to a police station at his request because "I want to stop this because I know it is not right, I being using my name and my signature" (charges 21 and 22).

D1 said, in answer to questions put by S/I Muhammad, that D2 asked him to sign TC in the hotel room. He added "in myself I was afraid, it is wrong but Amjad convinced me that it is okay so I agreed".

He only knew the cheques were counterfeit when he was arrested.

The Amex TC were given to him by D2 and he signed them.

D1 felt sorry for himself as "I shouldn't have agree at the first place".

D1 agreed that for every US$100 cashed he would get BD$4. He had received no money so far.

In his statement of 16 August 1994 (P11) D1 was asked about "Lito" whom he said came to the hotel room on 9 August 1994 when D2 was there.

Flora came before that, at 5-6 pm, to see D2. D2 made calls to Manila, before D1 left the room.

On 8 August 1994, D2 met Rolando at the hotel and invited him for coffee. D1 heard D2 ask Rolando where Flora was staying and Rolando gave D2 her phone number.

In his statement on 18 September 1994, taken by S/I Chiuh at Jerudong Prison (P12) D1 denied knowing Danny Melandrez. He said that he first met D2 on the plane and had only met Rolando and Flora in Brunei.

D1 repeated in evidence that he first met D2 on the plane. When they arrived in Brunei, D2 asked him to stay at the Capital Hotel. Here D2 told him that he could "make some money on the side-line by cashing in traveller's cheques for him". He said he will give me B$500 per day for whatever amount of traveller's cheques I cashed in. He told me not to be afraid, that the traveller's cheques were clear and real. When I cashed them on the first day, the bank accepted them and I thought they were real".

He added that, after what had happened, he did not trust D2 any more.

D2 offered him BD$35,000 on 31 August 1994 to change his statement and say that D1 did not know D2 at all. D1 replied that this could not be, because D1 had stayed at the hotel in Brunei with D2.

General

There is no dispute, in view of the admissions made by D1 in his statements, that D1 came to Brunei to look at business possibilities.

The statements contain admissions by D1 that he cashed the various TC specified in charges 1 to 20, except charges 9 and 10 where he admitted to cashing US$1,000, though charged with US$1,100, and charges 11 and 12, relating to the presentation of TC at Citibank, which are not mentioned in his statements.

Nor does D1 mention, in any of them, the 60 US$TC of US$100 each, found in his possession, in his bag, and the subject of charge 23.

The question to be determined is whether, at the time when he presented them, he knew or had reason to believe that the TC were counterfeit. This is to be judged in view of all the circumstances of the case.

I accept that there is insufficient evidence to link this defendant (D1) with any general conspiracy involving the passing of counterfeit cheques by other persons who have been convicted in another trial of cashing counterfeit TC in various hotels in Brunei at about the same time as those which are the subject of these charges.

A different version might be given by D2 if the latter were before the Court, but he is not. I therefore accept the evidence of D1 when he says that he had not met D2 before he (D1) met him on the plane flying to Brunei. It follows from this that it has not been established that D1 came to Brunei to take part in a conspiracy for the passing of counterfeit TC to hotels and banks in Brunei.

Expert Evidence

Mrs. Ng Gew Kwee, a senior scientific officer of the Department of Scientific Services, Singapore, was asked to examine a number of TC, handed to her by DSP Mohammad Mahathir Abdullah of the R.B.P.F. in five sealed envelopes on 13 October 1994.

Although Mrs. Ng's report deals with other TC as well, she gave in evidence only her opinion on TC numbered, in her report, 207 to 433 (excluding 403 to 413 which related to another case).

Her experience, and her previous evidence in the Courts, entitle her to be regarded as an expert witness. She submitted her report as P3.

Her opinion on the TC 207-433 (excluding 403 to 413) was that, for various reasons, which she sets out in her report, each of those TC are "cheques which have previously been used and subsequently treated chemically to remove particulars of previous bank endorsements and the original pre-sign and countersign signatures were mechanically erased before re-use".

In case of TC numbered 414-425, the pre-sign signature column had been mechanically tampered with.

On the basis of this evidence, which I accept as correct, all the 216 TC submitted to her and numbered 206-433 in her report (except 403-413) were "counterfeit banknotes".

Mrs. Ng conceded that the changes made to the TC would not be obvious to the eye and that an ordinary person could not tell that the TC had been tampered with.

The cashiers of the various banks, and the police officer who found 60 TC in the possession of D1, have identified the TC as those which were sent to Mrs. Ng for examination and are numbered by her as 206-402 and 414-433 in P3. I am satisfied that the TC cashed, or found in possession of D1, are the same as those examined by Mrs. Ng.

Evidence of Cashiers

PW1 (Malai Khairani) testified that D1, whom she identified, had cashed $1,000 US TC on 9 August 1994 at Citibank, main office in BSB.

Before payment, she referred the matter to her superior (PW2) who approved the payment (see charges 11, 12). D1 told her that he had bought the TC in Germany.

PW2 (Susannah Wong) says that she asked D1 for his passport and the sale advice for TC, at Citibank on 9 August. D1 gave her his passport and the sale advice. This did not show the TC in the right order, but D1 replied, when she asked him about it, that he had cashed TC in other banks.

Some of the numbers of those TC which he wished to cash were not in the sale advice.

D1 said that he got the TC in USA.

PW3 (Dk Haslina binti Pg Hj Hamid) was a teller at the HK Bank, Lambak, D1, whom she identified, cashed on 8, 9 and 10 August, $3,000 US TC. She paid him with the authority of her supervisor. She thought the TC were genuine (charges 1, 2, 7, 8, 17, 18).

PW4 (Lim Siew Hoon) was the supervisor at the Lambak branch of HK Bank. She identified D1 as the man who produced a passport to her on 8 August.

She asked D1 for his sale advice, which she produced in evidence. It showed that the TC which he wanted to cash were purchased in Germany. She did not check the advice against the TC presented by D1.

She did not know the TC were counterfeit when she authorized PW3 to cash them.

PW5 (Pg Md Yakob bin Pg Damit) was the cashier of HK Bank, Muara. He cashed $1,000 US TC for D1 on 9 August, and $2,000 US TC for D1 on 10 August, with the approval of his manager in each case (charges 19, 20).

He asked D1 about the TC numbers, which were not in order, and was told by D1 that he had visited other countries and cashed the TC there.

PW6 (Hashim bin Hj Osman) from the HK Bank, Muara, reported to the police on 12 August 1994 that the branch had cashed counterfeit TC. The branch did not discover that the TC were not genuine until a couple of days after they were cashed. At the time he cashed them, he did not suspect that they were not genuine.

PW7 (Siti Salmiah binte Hj Abd Majid) was a cashier at the HK Bank, BSB. She cashed TC for D1, whom she identified, on 8 August 1994. She cashed $1,000 US TC with the authority of her superior (charges 5, 6).

On 10 August, she cashed $2,000 US TC. As the TC were not in running order, she gave 4 receipts for them.

She did not realize that the TC were counterfeit until the day before D1 was arrested.

PW8 (Liew Mui Pit) was a cashier at the HK Bank, BSB on 10 August 1994. She identified D1 as the person for whom she cashed $1,000 US TC (10 x $50 and 5 x $100) with the authority of her supervisor. (charges 13, 14).

She asked D1 why the TC were not in order, but did not understand his reply.

On 11 August 1994, D1 presented a further US TC for $1,500. She prepared receipts for this amount. She gave two receipts as the TC were not in running order.

Her supervisor (PW9) did not authorize her to cash the TC that day, so she gave D1 no money (charges 21, 22).

PW9 (Aminah binti Dollah) was an assistant manager at HK Bank in BSB. She identified D1, who wanted to cash US TC $1,500 on 11 August 1994. She asked him for the sales advice, which he gave her. The numbers in the sales advice did not match the TC which D1 wanted to cash.

When she asked D1 where he got them he said 'Barclays Bank in London'. She phoned the police, who came. She did not remember D1 saying that he wanted to clarify the matter with the police.

PW10 (Hjh Noraini binte Hj Md Daud) was a cashier at HK Bank, Gadong on 8 August 1994, when D1, whom she identified, came to her branch.

She cashed US TC for $500. The TC seemed genuine to her (charges 3, 4). She did not discover the TC were counterfeit until 11 August 1994 when the head office told the branch.

PW11 (Ang Siew Heong) was a cashier at HK Bank, Seri Branch. She identified D1 as the person for whom she cashed 11 x US$100 TC on 9 August 1994 (charges 9, 10).

She did not suspect that the TC were not genuine. She was authorized by PW13 to pay.

PW12 (Hjh Mariani binti Hj Abd Hamid) was also a cashier at HK Bank, Seri branch. On 10 August 1994 she cashed for D1, whom she identified, US TC $1,000 with the approval of her superior, PW13.

She gave D1 two receipts as the TC were not in sequence (charges 15, 16).

The TC seemed genuine to her. She only learnt that they were counterfeit when head office told her so.

PW13 (Lim Yam Pheng) was on duty at HK Bank, Seri Branch, on 9 August 1994 and 10 August 1994. She authorized PW11 and PW12 to pay the TC presented to them by D1.

The TC looked genuine to her. She only learnt they were not on 11 August 1994.

The evidence of the cashiers and of their superior officers, which I accept in every case as true, is that all the TC listed in the appendices to charges 1-21 were presented by D1 to the various banks for encashment. With the exception of those in charges 21 and 22, the TC were cashed because the bank officers concerned believed them to be genuine, though it has been proved that they were not.

In the case of charges 21 and 22, the TC concerned (15 x 100$US) were presented for encashment by D1, but not cashed by the HK Bank branch.

Evidence of Taxi Driver

The evidence of PW15 (Hj Abd Rahman bin Dato Hj Tamin) is of importance. It shows, if accepted as true, that D1 was with D2 when D1 went into the various banks in Brunei, that D1 probably handed over paper money to D2 and that D2 waited during each such visit in the taxi near a bank, when D1 left the taxi, returning to it later.

The taxi driver remembered the following visits to various places near bank branches:

(a) Lambak on 8 August 1994 (charges 1, 2)

(b) Gadong on 8 August 1994 (charges 3, 4)

(c) BSB on 9 August 1994 (charges 5, 6)

(d) Lambak on 9 August 1994 (charges 7, 8)

(e) Muara on 9 August 1994 (charges 19, 20)

(f) Seri on 9 August 1994 (charges 9, 10)

(g) BSB on 10 August 1994 (charges 13, 14)

(h) Lambak on 10 August 1994 (charges 17, 18)

(i) Muara on 10 August 1994 (charges 19, 20)

(j) Seri on 10 August 1994 (charges 15, 16)

(k) Citibank on 10 August 1994 (charges 11, 12)

(l) BSB on 11 August 1994 (charges 21, 22)

PW15 did not see D1 (whom he identified and described as "the German") enter any of the banks, though he parked his taxi near the branches and assumed that D1 had been to them. He parked to get into the shade, not to watch the bank.

D1 was carrying a handbag whenever he left the taxi. This bag was identified by PW15. It was the one found in the possession of D1 when he was arrested by the police on 11 August 1994.

On each occasion when D1 left the taxi, the Pakistani (D2) was there and waited in the taxi until D1 returned.

In addition to the trips to the vicinity of banks, which match the evidence of the cashiers and the charges brought, the driver took both defendants to the Baadiah building. In this building is a branch of P.N.B. (Philippine National Bank) through which large sums, amounting to BD$10,000 and $5,000 were sent by D2 to Manila on 10 August 1994 and 11 August 1994.

There was extensive cross-examination of the taxi driver by D1; mainly, as I understood it, in an attempt to show that there was a conspiracy between the taxi driver and D2 to cash counterfeit TC and to use D1 in the process, without D1's knowledge.

He insisted that the taxi driver had not told the truth, because he was put under pressure not to do so. The driver had testified that his fare was paid each time by D2, though D1 had on two occasions told him where to go next. D2 did not pay him to give evidence against D1. He got no more than the proper taxi fare for each day. There was no agreement for a fee for the day of BD$150.

He never took D1 by himself to a bank. D2 always came as well. After D1 did not return to the taxi on 11 August 1994, he took D2 to the Malaysian frontier, but D2 was not allowed to cross and his passport was taken by an immigration officer.

He stood as the surety for D2 because he felt sorry for D2's wife and not because he was paid to do so. He was, he said, just a taxi driver and did not concern himself with what his passengers were doing.

I do not accept that the taxi driver was discredited. I find that his evidence was credible and reliable.

Possession of D1

PW16 (L/Cpl 2298 Md Din bin Tanjong) examined D1's handbag on 11 August 194. He identified D1 in the dock. He examined the bag when D1 was taken to the C.P.S in BSB. D1 saw the bag being searched and agreed that it belonged to him. In the handbag were 60 US$100 TC.

L/Cpl 2298 checked the TC one by one. He also found in the bag receipts for those cashed TC which have been produced in evidence.

Two days later, he searched the Pakistani, Amjad Nawaz (D2) in the CPS. He found on D2, 2 x BD$500 notes, 3 x US$100 notes, and 2 receipts for remittances to the Philippines.

These receipts showed that BD$10,000 had been sent to Manila on 10 August 1994 by D2 and that another BD$5,000 had been sent there by D2 on 11 August 1994.

L/Cpl 2298 thought that D1 was not lying when he spoke to him and to the senior inspector, when giving his statement on 12 August 1994. D1 cooperated by giving the statement without trouble. He did not remember telling D1 that the Pakistani (D2) was a liar.

The defendant did not dispute that the handbag belonged to him, that he was in possession of it, that he took it to the various banks to cash TC and that, when the bag was searched at the CPS he knew that it contained 60 US$100 TC, each of which he had signed.

I am satisfied, as D1 indeed admitted in evidence, that he intended to cash these TC also, if he had not been arrested by the police after D1 had visited the HK Bank in BSB on 11 August 1993 (charge 23). I have no doubt, either that the TC were counterfeit and that all the elements of an offence against s. 489 CPC were proved, subject only to the question of D1's knowledge, which is discussed below.

Position of D1

As has been indicated above, D2 did not surrender to his bail and the trial proceeded without him.

At the close of the prosecution case, I ruled that there was a case to answer against D1.

Having done so, I complied with s. 220 CPC. I informed D1 of the three choices open to him, silence, an unsworn statement from the dock and evidence on oath. The advantages and disadvantages of each course were explained to him. D1 chose to give evidence on oath.

It was important to remember that D1 was not represented. He was therefore obliged to try to put his case when the procedure was strange and the trial was conducted in a foreign tongue.

Although I tried to ask such questions as I thought important from his point of view, this is not as satisfactory as representation. I shall not therefore, take any lack of challenge of a witness as counting against him. I shall try to bear these significant disadvantages in mind when assessing the evidence.

Defence of D1

In evidence, D1 repeated that he first met D2 on the plane to Brunei and that he had not met Mr. Ayson or Miss Cruz, who were convicted of passing counterfeit in Brunei in early August, until he had arrived in Brunei.

His story is supported, to some extent, by the presence of D2 outside each bank where D1 cashed the TC. This suggests that D2 did not trust D1, as the latter asserts; this would have been less likely if there had been a prior agreement between them in the Philippines.

There is no evidence to the effect that D1 and D2 had met before they did so on the plane to Brunei. Not without hesitation, I have concluded that there was no agreement between them before they arrived in Brunei, to pass counterfeit TC through various Brunei banks.

This does not inhibit me, however, if the evidence supports it, from finding that there was such an agreement in Brunei. This will be considered below.

D1 described in evidence how he had arrived in Brunei on 6 August 1994 and that D2 had invited him to share a room at the Capital Hotel and paid for the room for the first three nights.

When they arrived at the hotel, D2 showed him a pile of US TC in D2's bag. He offered D1 BD$500 a day if D1 would cash these TC in Brunei. This D2 said, should be easy with a German passport.

According to D1, he thought this was unusual, but imagined that it must have something to do with D2's job. But D2 did not give him any reason for not cashing the TC himself. D1 did not ask him, as he wanted the BD$500 a day.

D1 admitted that he cashed the various TC specified by the witnesses for the prosecution in the bank branches contained in the charges on 8, 9, 10 and 11 August 1994.

When D1 went to each bank D2 waited outside, or came into the bank himself and watched him. He handed all the money from the TC to D2. With regard to the US$100 x 60 TC found in his bag, he agreed that he had signed them, that they were in his bag and that he intended to cash them at banks on 11 August 1994.

He did not realize that the TC were counterfeit when he presented them to the banks.

He could not remember saying to Miss Wong that the sales advice which he gave her showed that he bought the TC listed in it in USA. Nor that he told Pg Md Yusof that he had cashed the TC abroad; nor that he told Aminah that he got the TC, in the list which he gave her, in London; nor that he told Malai Khairani that he bought the TC in Germany.

D2 did not tell him that the TC were forged. He just did what D2 told him to do. He did not think that he was doing anything illegal. He hoped to buy some presents for his family.

D2 told him that he should show the bank a sales advice if he was asked for it. If he was asked where he bought the TC, he could say anywhere. D1 knew that a TC had to be signed when you bought it from an issuing bank but thought that D2, as a finance manager, was allowed to have blank TC and to sell them to anyone. D1 agreed that, by signing the TC, he was representing to the bank that the TC were his.

D1 realized that D2 was asking him to tell an untruth about where he bought the TC, but he just complied with what D2 asked him to do. He did not tell any of the bank's that he had got the TC from D2, because he was not asked this question.

D1 agreed that, with hindsight, if he had told the cashiers the truth, the cashiers would not have cashed the TC, though he did not realize this at the time. He had no reason to think that any of the transactions might have been wrong.

He now appreciates that there would have been no need for D2 to ask someone else to cash the TC for him if the transactions were legal, but even the expert in Singapore conceded that the TC looked genuine. D1 insisted that he did not know that he was taking part in an illegal transaction.

D1 has therefore not disputed that he cashed the TC as charged, that he received the money for them, that he handed it all to D2, who promised him BD$500 a day, which he has never received, that he was in possession of a further US TC $100 x 60 when arrested, and that he intended to cash these TC as well.

But he insists that D2 never told him that the TC were counterfeit and that he had no reason to believe that they were.

Knowledge of D1

I must, when assessing what D1 knew, or had reason to believe, in August 1994, not be influenced by hindsight, since it is clear that, on the evidence now available, the TC listed in the charges were counterfeit though there were all (except for those presented on 11 May 1994 and the subject of charges 21 and 22) cashed by the banks as genuine. There is no doubt that, to anyone but an expert, they would have appeared to be genuine.

D1 said, and this I accept, that if they had been obvious fakes, they would not have been cashed by the banks. Thus D1's knowledge or belief must be assessed by the surrounding circumstances, not by the fact that the TC themselves appeared to be other than genuine.

What are the circumstances which suggest that D1 had reason to believe that the TC were counterfeit? There is no direct evidence that D2 told D1 that this was so. But there are other factors which should have alerted D1 to the fact that the TC must have been counterfeit:

(a) D1 was to be paid BD$500 a day for his services. This is a substantial sum for a proper act.

(b) D1 was a stranger to D2. Why should D1 choose someone he did not know for something that was legal?

(c) Why, if the proposed transactions were legal, did D2 not carry them out himself?

(d) If D2 could not do business in Brunei without permission, the same prohibition would have applied to D1. Such a prohibition does not, in any event, extend to the cashing of TC, as D1 should have realized.

(e) D1 knew, when he signed the sales advice, setting out the TC which he was supposed to have purchased, that he had not done so.

(f) D1 was familiar with TC. He knew that they had to be signed at the issuing bank, before the purchaser could take them away. Yet D2 had a large number of blank TC.

(g) D1 signed TC and sales advice, though he knew that this was untrue, because he had bought nothing himself before they were presented to the banks.

(h) D1 went to about a dozen branches in 4 days. Why did he do this if he thought the transactions were proper? Were these visits not intended to ensure that D1 should evade detection?

(i) He told untruths in at least three banks, as to where he got the TC, saying that he purchased them in Germany, the USA and London.

(j) He presented sales advice, which he knew to be false, since he had signed them only after he reached Brunei and knew that they stated that he had bought TC elsewhere.

(k) He told one bank that he had cashed the TC, which he presented for cashing, in another country, which was untrue to his knowledge.

(l) Why did he tell D2 that he and D2 should separate after 11 August 1994 if he knew that the transactions were proper?

(m) He knew, or should have known, that the sales advice which he signed did not agree with the numbers on the TC which he presented.

I am forced to conclude that, when he cashed TC, D1 had good reason to suppose that they were counterfeit, taking into account the circumstances of the encashments. These prove in my judgment, that D1 had ample reason to believe that the TC were counterfeit.

It is not necessary for the prosecution to show any motive, though to do so often makes sense of actions which are otherwise inexplicable.

In this instance, D1 fell into temptation. As he said, in his first statement, his business in Manila was not prospering. When he arrived in Brunei, he was offered the chance of making easy money, by presenting a large number of TC for cashing. Whatever his initial fear may have been, he soon overcame it and became a willing party, with D2, to cashing TC which he had reason to believe were counterfeit, for an expected reward from D2.

Are the Offences Proved?

So far as s. 489 BPC is concerned, the evidence of Mrs. Ng has established, to my satisfaction, that all the TC listed in the charges were counterfeit, as this is defined in s. 28 PC.

I am sure that D1, when presenting the TC, used the TC as genuine and that he had reason to believe that the TC were counterfeit.

The prosecution has proved circumstances which point irresistibly to the view that D1 knew or must have believed that the TC were counterfeit. This conclusion is reinforced by the large number of TC found in the possession of D1.

With regard to the charges under s. 420 PC (cheating) the prosecution has established that the cashiers of the various banks were deceived into handing over cash to D1 because they believed the TC to be genuine. This amounted to a deception, if the TC presented for cashing were not genuine, to the knowledge of the person presenting them. By presenting the TC, knowing them to be counterfeit, there was a dishonest inducement by D1 to another person that the latter should deliver cash on presentation of the TC.

I find that the inducement was a dishonest one, as defined in s. 24 PC and that there was cheating within s. 420 PC whenever the TC were presented (attempted cheating only in the case of charge 22).

I have also taken into account the encashments by D1 in several different banks, as showing that each transaction was part of a series of frauds, not that the intention of D1 was dishonest on any particular occasion.

Conclusion

For the reasons which have been given above, I find that the prosecution has proved, beyond a reasonable doubt, that D1 is guilty of the 23 offences charged against him and I convict him of them accordingly.

I should add that, on the evidence, he was a dupe, rather than a prime initiator, and that the main culprit, in the scheme to defraud banks in Brunei by the use of counterfeit TC, was the Pakistani (D2) and not D1, who was impelled by the lure of easy money to take part in the scheme.

Sentence

You have been found guilty of 23 offences involving a substantial number of counterfeit TC.

You cashed TC to the value of US$13,600, receiving the equivalent in Brunei Dollars, which you passed to D2, who forwarded the money to Manila.

In addition, you were found with a further 60 TC, of a value of US$6,000, in your handbag.

I accept that, when you left Manila, you had not met the Pakistani and that you lent yourself to an illegal scheme for profit, even though you have in fact received nothing for what you did. If you had known, before you came to Brunei, that you were expected to cash counterfeit TC, I would have been obliged to impose a much longer sentence.

You have not been in trouble before. You are a man of 50 with a wife and four children and no doubt bitterly regret having lent yourself to a scheme which I find that you knew to be illegal, involving the cashing of counterfeit TC.

I am prepared to assume that D2 was the organizer of the scheme, that he stood to profit by it more than you did and that you were a last minute recruit.

Nevertheless, the cashing of substantial quantities of counterfeit TC has caused loss to the banks, amounting to the equivalent, in Brunei dollars, to US$13,600.

I am obliged to pass a sentence which will make it clear that the cashing of counterfeit TC, is regarded as a matter of some seriousness in Brunei, even if the part played by you was lesser than that of D2 and that you were not part of a larger scheme to defraud in Brunei. I found that the defendants in C/T 13/94, where sentences of 3 years and 2 years were imposed, knew, before they came to Brunei, that they were taking part in a scheme to cash other counterfeit traveller's cheques.

Taking these sentences into account, I consider that there should be imposed a sentence of 15 months on each of the 23 charges.

All sentences will run concurrently so that the total is 15 months imprisonment, as from 11 August 1994.